

By: Williams  
(Hunter)

S.B. No. 1286

Substitute the following for S.B. No. 1286:

By: Oliveira

C.S.S.B. No. 1286

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of professional employer services;  
authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 91, Labor Code, is amended  
to read as follows:

CHAPTER 91. PROFESSIONAL EMPLOYER ORGANIZATIONS [~~STAFF LEASING~~  
~~SERVICES~~]

SECTION 2. Section 91.001, Labor Code, is amended by  
amending Subdivisions (1), (2-a), (3), (7), (11), (14), (15), (16),  
and (17) and adding Subdivisions (3-a), (3-b), and (7-a) to read as  
follows:

(1) "Applicant" means a person [~~business entity~~]  
applying for a license or the renewal of a license under this  
chapter.

(2-a) "Assurance organization" means an independent  
entity approved by the commission that:

(A) provides a national program of accreditation  
and financial assurance for professional employer organizations  
[~~staff leasing services companies~~];

(B) has documented qualifications, standards,  
and procedures acceptable to the department; and

(C) agrees to provide information, compliance  
monitoring services, and financial assurance useful to the

department in accomplishing the provisions of this chapter.

(3) "Client [~~company~~]" means any [a] person who enters into a professional employer services agreement [~~that contracts~~] with a license holder [~~and is assigned employees by the license holder under that contract~~].

(3-a) "Coemployer" means a professional employer organization or a client that is a party to a coemployment relationship.

(3-b) "Coemployment relationship" means a contractual relationship between a client and a professional employer organization that involves the sharing of employment responsibilities with or allocation of employment responsibilities to covered employees in accordance with the professional employer services agreement and this chapter.

(7) "Controlling person" means an individual who:

(A) possesses direct or indirect control of 25 percent or more of the voting securities of a business entity [~~corporation~~] that offers or proposes to offer professional employer [~~staff-leasing~~] services;

(B) possesses the authority to set policy and direct management of a business entity [~~company~~] that offers or proposes to offer professional employer [~~staff-leasing~~] services;

(C) is employed, appointed, or authorized by a business entity [~~company~~] that offers or proposes to offer professional employer [~~staff-leasing~~] services to enter into a professional employer services agreement [~~contract~~] with a client [~~company~~] on behalf of the business entity [~~company~~]; or

(D) a person who is an officer or director of a corporation or a general partner of a partnership that offers or proposes to offer professional employer [~~staff leasing~~] services.

(7-a) "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client.

(11) "License holder" means a person licensed under this chapter to provide professional employer [~~staff leasing~~] services.

(14) "Professional employer services" means the services provided through coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees. ["Staff leasing services" means an arrangement by which employees of a license holder are assigned to work at a client company and in which employment responsibilities are in fact shared by the license holder and the client company, the employee's assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal in nature, and a majority of the work force at a client company worksite or a specialized group within that work force consists of assigned employees of the license holder. The term includes professional employer organization services.] The term does not include:

- (A) temporary help;
- (B) an independent contractor;
- (C) the provision of services that otherwise meet the definition of "professional employer [~~"staff leasing~~]

services" by one person solely to other persons who are related to the service provider by common ownership; or

(D) a temporary common worker employer as defined by Chapter 92.

(15) "Professional employer organization" [~~"Staff leasing services company"~~] means a business entity that offers professional employer [~~staff leasing~~] services. [~~The term includes a professional employer organization.~~]

(16) "Temporary help" means an arrangement by which an organization hires its own employees and assigns them to a company [~~client~~] to support or supplement the company's [~~client's~~] work force in a special work situation, including:

(A) an employee absence;

(B) a temporary skill shortage;

(C) a seasonal workload; or

(D) a special assignment or project.

(17) "Wages" means:

(A) compensation for labor or services rendered by a covered [~~an assigned~~] employee, whether computed on a time, task, piece, or other basis; and

(B) vacation pay, holiday pay, sick leave pay, parental leave pay, severance pay, bonuses, commissions, stock option grants, or deferred compensation owed to a covered [~~an assigned~~] employee under a written agreement.

SECTION 3. Chapter 91, Labor Code, is amended by adding Sections 91.0011 and 91.0012 to read as follows:

Sec. 91.0011. COEMPLOYMENT RELATIONSHIP. (a) A

1 coemployment relationship is intended to be an ongoing relationship  
2 rather than a temporary or specific one, in which the rights,  
3 duties, and obligations of an employer that arise out of an  
4 employment relationship are allocated between coemployers under a  
5 professional employer services agreement. Coemployment is not a  
6 joint employment arrangement.

7 (b) In a coemployment relationship:

8 (1) the professional employer organization may  
9 enforce only those employer rights and is subject to only those  
10 obligations specifically allocated to the professional employer  
11 organization by the professional employer services agreement or  
12 this chapter;

13 (2) the client may enforce any right and is obligated  
14 to perform those employer obligations allocated to the client by  
15 the professional employer services agreement or this chapter; and

16 (3) the client may enforce any right and is obligated  
17 to perform any obligation of an employer not specifically allocated  
18 to the professional employer organization by the professional  
19 employer services agreement or this chapter.

20 Sec. 91.0012. COVERED EMPLOYEE. (a) A covered employee  
21 must meet all the following criteria:

22 (1) the individual must receive written notice of the  
23 coemployment relationship with the professional employer  
24 organization; and

25 (2) the individual's coemployment relationship must be  
26 under a professional employer services agreement subject to this  
27 chapter.

1        (b) An individual who is an executive employee, as described  
2 by Section 406.097, of the client is a covered employee, except to  
3 the extent the professional employer organization and the client  
4 expressly agree in the professional employer services agreement  
5 that the individual is not a covered employee.

6        SECTION 4. Sections 91.002(b) and (c), Labor Code, are  
7 amended to read as follows:

8        (b) Each person who offers professional employer [~~staff~~  
9 ~~leasing~~] services is subject to this chapter and the rules adopted  
10 by the commission.

11        (c) Notwithstanding any other provision of this chapter,  
12 nothing in this chapter preempts the existing statutory or  
13 rulemaking authority of any other state agency or entity to  
14 regulate professional employer [~~staff leasing~~] services in a manner  
15 consistent with the statutory authority of that state agency or  
16 entity.

17        SECTION 5. Section 91.003(a), Labor Code, is amended to  
18 read as follows:

19        (a) Each state agency that in performing duties under other  
20 law affects the regulation of professional employer [~~staff leasing~~]  
21 services shall cooperate with the department and other state  
22 agencies as necessary to implement and enforce this chapter.

23        SECTION 6. Sections 91.004, 91.005, 91.006, 91.007, 91.011,  
24 and 91.012, Labor Code, are amended to read as follows:

25        Sec. 91.004. EFFECT OF OTHER LAW ON CLIENTS AND EMPLOYEES.

26        (a) This chapter does not exempt a client of a license holder, or  
27 any covered [~~assigned~~] employee, from any other license

requirements imposed under local, state, or federal law.

(b) A covered ~~[An]~~ employee who is licensed, registered, or certified under law ~~[and who is assigned to a client company]~~ is considered to be an employee of the client ~~[company]~~ for the purpose of that license, registration, or certification.

(c) A license holder is not engaged in the unauthorized practice of an occupation, trade, or profession that is licensed, certified, or otherwise regulated by a governmental entity solely by entering into a professional employer services ~~[staff leasing]~~ agreement with a client ~~[company]~~ and covered ~~[assigned]~~ employees.

Sec. 91.005. APPLICATION OF CERTAIN PROCUREMENT LAWS. With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client's ~~[client company's]~~ status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected because the client ~~[company]~~ has entered into a professional employer services ~~[an]~~ agreement with a license holder or uses the services of a license holder.

Sec. 91.006. WORKERS' COMPENSATION COVERAGE. (a) A certificate of insurance coverage or other evidence of coverage showing that either a license holder or a client maintains ~~[a policy of]~~ workers' compensation insurance coverage constitutes proof of workers' compensation insurance coverage for the license holder and the client ~~[company]~~ with respect to all covered employees of the license holder and ~~[assigned to]~~ the client ~~[company]~~. The state and a political subdivision of the state shall accept a certificate

1 of insurance coverage or other evidence of coverage described by  
2 this section as proof of workers' compensation coverage under  
3 Chapter 406.

4 (b) For a client [~~company~~] that has employees who are not  
5 covered [~~assigned~~] employees under a professional employer [~~staff~~  
6 ~~leasing~~] services agreement, the state or a political subdivision  
7 of the state may require the client [~~company~~] to furnish separate  
8 proof of workers' compensation insurance coverage for those  
9 employees.

10 Sec. 91.007. APPLICATION OF LABOR RELATIONS LAWS. This  
11 chapter does not relieve a client [~~company~~] of a right, obligation,  
12 or duty under:

- 13 (1) Chapter 101;  
14 (2) the federal National Labor Relations Act (29  
15 U.S.C. Section 151 et seq.);  
16 (3) the federal Railway Labor Act (45 U.S.C. Section  
17 151 et seq.); or  
18 (4) any other law governing labor relations.

19 Sec. 91.011. LICENSE REQUIRED. A person may not engage in  
20 or offer professional employer [~~staff-leasing~~] services in this  
21 state unless the person holds a license issued under this chapter.

22 Sec. 91.012. GENERAL LICENSE REQUIREMENTS. To be qualified  
23 to serve as a controlling person of a license holder under this  
24 chapter, that person must be at least 18 years of age and have  
25 educational, managerial, or business experience relevant to:

- 26 (1) operation of a business entity offering  
27 professional employer [~~staff-leasing~~] services; or



1 (2) service as a controlling person of a professional  
2 employer organization [~~staff leasing services company~~].

3 SECTION 7. Sections 91.014(a) and (c), Labor Code, are  
4 amended to read as follows:

5 (a) An applicant for an original or renewal license must  
6 demonstrate positive working capital in the following amounts:

7 (1) \$50,000 if the applicant employs fewer than 250  
8 covered [~~assigned~~] employees;

9 (2) \$75,000 if the applicant employs at least 250 but  
10 not more than 750 covered [~~assigned~~] employees; and

11 (3) \$100,000 if the applicant employs more than 750  
12 covered [~~assigned~~] employees.

13 (c) Information submitted to or maintained by the  
14 department is subject to Chapter 552, Government Code, other than  
15 information related to:

16 (1) identification of clients [~~client companies~~];

17 (2) working capital;

18 (3) financial statements; or

19 (4) federal tax returns.

20 SECTION 8. Section 91.015(a), Labor Code, is amended to  
21 read as follows:

22 (a) To receive a professional employer organization [~~staff~~  
23 ~~leasing services company~~] original license, a person shall file  
24 with the department a written application accompanied by the  
25 application fee.

26 SECTION 9. Sections 91.017(a) and (c), Labor Code, are  
27 amended to read as follows:

1 (a) Each applicant for an original or renewal professional  
2 employer organization [~~staff leasing services company~~] license  
3 shall pay to the department before the issuance of the license or  
4 license renewal a fee set by the commission by rule.

5 (c) Fees collected by the department under this chapter may  
6 [~~shall~~] be used only to implement this chapter.

7 SECTION 10. Sections 91.018(e) and (f), Labor Code, are  
8 amended to read as follows:

9 (e) A license holder offering professional employer [~~staff~~  
10 ~~leasing~~] services in more than one state may advertise in this state  
11 using the name of its parent company or under a trade name,  
12 trademark, or service mark. The trade name, trademark, service  
13 mark, or parent company name must be listed on the license in  
14 addition to the licensed name used by the license holder in this  
15 state.

16 (f) Each written proposal provided to a prospective client  
17 [~~company~~] and each contract between a license holder and a client  
18 [~~company~~] or covered [~~assigned~~] employee shall clearly identify the  
19 name of the license holder. A proposal or contract may also  
20 identify the trade name, trademark, service mark, or parent company  
21 name of the license holder. A license holder may use written  
22 materials including forms, benefit information, letterhead, and  
23 business cards that bear only the trade name, trademark, service  
24 mark, or parent company name of the license holder.

25 SECTION 11. Sections 91.019(a), (b), and (c), Labor Code,  
26 are amended to read as follows:

27 (a) The commission by rule shall provide for the issuance of

1 a limited license to a person who seeks to offer limited  
2 professional employer [~~staff leasing~~] services in this state.

3 (b) For purposes of this section, a professional employer  
4 organization [~~staff leasing services company~~] is considered to be  
5 offering limited professional employer [~~staff leasing~~] services if  
6 the professional employer organization [~~staff leasing services~~  
7 ~~company~~]:

8 (1) employs fewer than 50 covered [~~assigned~~] employees  
9 in this state at any one time;

10 (2) does not provide covered [~~assigned~~] employees to a  
11 client [~~company~~] based or domiciled in this state; and

12 (3) does not maintain an office in this state or  
13 solicit clients [~~client companies~~] located or domiciled in this  
14 state.

15 (c) A professional employer organization [~~staff leasing~~  
16 ~~services company~~] that offers limited professional employer [~~staff~~  
17 ~~leasing~~] services shall complete the application forms and pay the  
18 fees for a limited license as prescribed by the department. A  
19 limited license is valid for one year from the date of issuance and  
20 may be renewed annually on submission of a renewal application and  
21 payment of the required fees.

22 SECTION 12. Section 91.020, Labor Code, is amended to read  
23 as follows:

24 Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. The  
25 department may take disciplinary action against a license holder on  
26 any of the following grounds:

27 (1) engaging in professional employer [~~staff leasing~~]

1 services or offering to engage in the provision of professional  
2 employer [~~staff leasing~~] services without a license;

3 (2) transferring or attempting to transfer a license  
4 issued under this chapter;

5 (3) violating this chapter or any order or rule issued  
6 by the executive director or commission under this chapter;

7 (4) failing after the 31st day after the date on which  
8 a felony conviction of a controlling person is final to notify the  
9 department in writing of the conviction;

10 (5) failing to cooperate with an investigation,  
11 examination, or audit of the license holder's records conducted by  
12 the license holder's insurance company or the insurance company's  
13 designee, as allowed by the insurance contract or as authorized by  
14 law by the Texas Department of Insurance;

15 (6) failing after the 31st day after the effective  
16 date of a change in ownership, principal business address, or the  
17 address of accounts and records to notify the department and the  
18 Texas Department of Insurance of the change;

19 (7) failing to correct any tax filings or payment  
20 deficiencies within a reasonable time as determined by the  
21 executive director;

22 (8) refusing, after reasonable notice, to meet  
23 reasonable health and safety requirements within the license  
24 holder's control and made known to the license holder by a federal  
25 or state agency;

26 (9) being delinquent in the payment of the license  
27 holder's insurance premiums other than those subject to a

legitimate dispute;

(10) being delinquent in the payment of any employee benefit plan premiums or contributions other than those subject to a legitimate dispute;

(11) knowingly making a material misrepresentation to an insurance company or to the department or other governmental agency;

(12) failing to maintain the working capital required under Section 91.014; or

(13) using professional employer [~~staff-leasing~~] services to avert or avoid an existing collective bargaining agreement.

SECTION 13. Section 91.021(b), Labor Code, is amended to read as follows:

(b) A professional employer organization [~~staff-leasing services company~~] may authorize an assurance organization that is qualified and approved by the commission to act on its behalf in complying with the licensing requirements of this chapter, including the electronic filing of information and the payment of application and licensing fees. Use of an assurance organization is optional and is not mandatory for a professional employer organization [~~staff-leasing services company~~].

SECTION 14. Subchapter C, Chapter 91, Labor Code, is amended to read as follows:

SUBCHAPTER C. PROFESSIONAL EMPLOYER SERVICES [~~STAFF LEASING SERVICES~~] AGREEMENT

Sec. 91.031. AGREEMENT; NOTICE. (a) A license holder

1 shall establish the terms of a professional employer [~~staff~~  
2 ~~leasing~~] services agreement by a written contract between the  
3 license holder and the client [~~company~~].

4 (b) The license holder shall give written notice of the  
5 agreement as it affects covered [~~assigned~~] employees to each  
6 covered employee [~~assigned to a client company worksite~~].

7 (c) The written notice required by Subsection (b) must be  
8 given to each covered [~~assigned~~] employee not later than the first  
9 payday after the date on which that individual becomes a covered [~~an~~  
10 ~~assigned~~] employee.

11 Sec. 91.032. CONTRACT REQUIREMENTS. (a) A professional  
12 employer services agreement [~~contract~~] between a license holder and  
13 a client [~~company~~] must provide that the license holder:

14 (1) shares, as provided by Subsection (b), with the  
15 client [~~company~~] the right of direction and control over covered  
16 employees [~~assigned to a client's worksites~~];

17 (2) assumes responsibility for the payment of wages to  
18 the covered [~~assigned~~] employees without regard to payments by the  
19 client to the license holder;

20 (3) assumes responsibility for the payment of payroll  
21 taxes and collection of taxes from payroll on covered [~~assigned~~]  
22 employees;

23 (4) shares, as provided by Subsection (b), with the  
24 client [~~company~~] the right to hire, fire, discipline, and reassign  
25 the covered [~~assigned~~] employees; and

26 (5) shares, as provided by Subsection (b), with the  
27 client [~~company~~] the right of direction and control over the

1 adoption of employment and safety policies and the management of  
2 workers' compensation claims, claim filings, and related  
3 procedures.

4 (b) Notwithstanding any other provision of this chapter, a  
5 client [~~company~~] retains sole responsibility for:

6 (1) the direction and control of covered [~~assigned~~]  
7 employees as necessary to conduct the client's [~~client-company's~~]  
8 business, discharge any applicable fiduciary duty, or comply with  
9 any licensure, regulatory, or statutory requirement;

10 (2) goods and services produced by the client  
11 [~~company~~]; and

12 (3) the acts, errors, and omissions of covered  
13 [~~assigned~~] employees committed within the scope of the client's  
14 [~~client-company's~~] business.

15 (c) Notwithstanding Subsection (a)(2), a client [~~company~~]  
16 is solely obligated to pay any wages for which:

17 (1) obligation to pay is created by an agreement,  
18 contract, plan, or policy between the client [~~company~~] and the  
19 covered [~~assigned~~] employee; and

20 (2) the professional employer organization [~~staff~~  
21 ~~leasing services company~~] has not contracted to pay.

22 (d) Each professional employer organization [~~staff leasing~~  
23 ~~services company~~] shall disclose the requirements of Subsection (c)  
24 in writing to each covered [~~assigned~~] employee.

25 SECTION 15. Section 91.041, Labor Code, is amended by  
26 amending Subsections (a) and (b) and adding Subsections (a-1) and  
27 (a-2) to read as follows:

1       (a) A client and license holder are each considered an  
2 employer under the laws of this state for purposes of sponsoring  
3 retirement and welfare benefit plans for covered employees. [~~A~~  
4 ~~license holder may sponsor and maintain employee benefit plans for~~  
5 ~~the benefit of assigned employees. A client company may include~~  
6 ~~assigned employees in any benefit plan sponsored by the client~~  
7 ~~company.~~]

8       (a-1) A license holder may sponsor a single welfare benefit  
9 plan under which eligible covered employees of one or more clients  
10 may elect to participate.

11       (a-2) A fully insured welfare benefit plan offered to the  
12 covered employees of a license holder and provided by an insurance  
13 company authorized to provide that insurance in this state or a  
14 self-funded health benefit plan sponsored by a license holder as  
15 provided by Section 91.0411 shall be treated for purposes of state  
16 law as a single employer welfare benefit plan.

17       (b) With respect to any insurance or benefit plan provided  
18 by a license holder for the benefit of its assigned employees, a  
19 license holder shall disclose the following information to the  
20 department, each client [~~company~~], and its covered [~~assigned~~]  
21 employees:

- 22               (1) the type of coverage;
- 23               (2) the identity of each insurer for each type of  
24 coverage;
- 25               (3) the amount of benefits provided for each type of  
26 coverage and to whom or in whose behalf benefits are to be paid;
- 27               (4) the policy limits on each insurance policy; and



1           (5) whether the coverage is fully insured, partially  
2 insured, or fully self-funded.

3           SECTION 16. Subchapter D, Chapter 91, Labor Code, is  
4 amended by adding Section 91.0411 to read as follows:

5           Sec. 91.0411. SELF-FUNDED HEALTH BENEFIT PLAN. (a) In this  
6 section, "commissioner" means the commissioner of insurance.

7           (b) A license holder may sponsor a benefit plan that is not  
8 fully insured if the license holder meets the requirements of this  
9 section and is approved to sponsor the plan by the commissioner.

10          (c) The commissioner may, on notice and opportunity for all  
11 interested persons to be heard, adopt rules and issue orders  
12 reasonably necessary to augment and implement the regulation of  
13 benefit plans sponsored by a license holder that are not fully  
14 insured. The commissioner may not adopt a rule that requires  
15 clients or covered employees to be members of an association or  
16 group in the same trade or industry in order to be covered by a  
17 license holder-sponsored benefit plan that is not fully insured.  
18 The rules must include all requirements that must be met by the  
19 license holder and the plan, including:

- 20           (1) initial and final approval requirements;  
21           (2) authority to prescribe forms and items to be  
22 submitted to the commissioner by the license holder;  
23           (3) a fidelity bond;  
24           (4) use of an independent actuary;  
25           (5) use of a third-party administrator;  
26           (6) authority for the commissioner to examine an  
27 application or a plan;

1           (7) the minimum number of clients and covered  
2 employees covered by the plan;

3           (8) standards for those natural persons managing the  
4 plan;

5           (9) the minimum amount of gross contributions;

6           (10) the minimum amount of written commitment, binder,  
7 or policy for stop-loss insurance;

8           (11) the minimum amount of reserves; and

9           (12) a fee in an amount reasonable and necessary to  
10 defray the costs of administering this section to be deposited to  
11 the credit of the operating fund of the Texas Department of  
12 Insurance.

13       (d) Information submitted under this section is  
14 confidential and not subject to disclosure under Chapter 552,  
15 Government Code.

16       (e) Each license holder under this section shall appoint the  
17 commissioner as its resident agent for purposes of service of  
18 process. The fee for that service is \$50, payable at the time of  
19 appointment.

20       (f) The commissioner may examine the affairs of any plan and  
21 shall have access to the records of the plan. The commissioner may  
22 examine under oath a manager or employee of the license holder in  
23 connection with the plan.

24       (g) In addition to any requirement or remedy under a law,  
25 the commissioner may suspend, revoke, or limit the authorization of  
26 a plan if the commissioner determines, after notice and hearing,  
27 that the plan does not comply with this section. The commissioner

1 may notify the attorney general of a violation of this section, and  
2 the attorney general may apply to a district court in Travis County  
3 for leave to file suit in the nature of quo warranto or for  
4 injunctive relief or both.

5 (h) A plan under this section is subject to Chapters 401,  
6 404, 441, and 443, Insurance Code.

7 SECTION 17. Section 91.042, Labor Code, is amended by  
8 amending Subsections (a) through (h) and adding Subsections (a-1),  
9 (a-2), and (c-1) to read as follows:

10 (a) A license holder or client may elect to obtain workers'  
11 compensation insurance coverage for covered [~~the license holder's~~  
12 ~~assigned~~] employees through an insurance company as defined under  
13 Section 401.011(28) or through self-insurance as provided under  
14 Chapter 407.

15 (a-1) The client and the professional employer organization  
16 shall specify in the professional employer services agreement  
17 whether the parties have elected to obtain workers' compensation  
18 insurance coverage for the covered employees and shall specify  
19 which party must maintain coverage. If the license holder  
20 maintains workers' compensation insurance coverage for the client,  
21 an individual who is an executive employee, as described by Section  
22 406.097, of the client is eligible to be treated as an executive  
23 employee for premium calculation and classification purposes. A  
24 copy of the professional employer services agreement must be  
25 provided to the Texas Department of Insurance on request.  
26 Information obtained by the Texas Department of Insurance under  
27 this section is confidential and not subject to disclosure under

1 Chapter 552, Government Code.

2 (a-2) If the client elects to maintain workers'  
3 compensation insurance coverage for the covered employees under the  
4 client's policy or other coverage, the client shall pay workers'  
5 compensation insurance premiums for the covered employees based on  
6 the experience rating of the client.

7 (b) If a license holder maintains workers' compensation  
8 insurance coverage for covered employees, the license holder shall  
9 pay workers' compensation insurance premiums for the covered  
10 employees based on the experience rating of the client [~~company~~]  
11 for the first two years the covered employees are covered under the  
12 professional employer organization's policy [~~client company has a~~  
13 ~~contract with the license holder~~] and as further provided by rule by  
14 the Texas Department of Insurance.

15 (c) For workers' compensation insurance purposes, a license  
16 holder and the license holder's client [~~company~~] shall be  
17 coemployers. If either a license holder or a client elects to  
18 obtain workers' compensation insurance coverage for covered  
19 employees, the client [~~company~~] and the license holder are subject  
20 to Sections 406.005, 406.034, [and] 408.001, and 411.032.

21 (c-1) Notwithstanding Subsection (c), for purposes of  
22 Section 462.308(a)(2), Insurance Code, the client is considered to  
23 be the insured employer.

24 (d) If a license holder or a client does not elect to obtain  
25 workers' compensation insurance coverage for covered employees,  
26 both the license holder and the client [~~company~~] are subject to  
27 Sections 406.004, 406.005, [and] 406.033, and 411.032.

1           (e) After the expiration of the two-year period under  
 2 Subsection (b), if the client elects to obtain ~~[company obtains a~~  
 3 ~~new]~~ workers' compensation insurance coverage for covered  
 4 employees through coverage maintained by the client, or if the  
 5 professional employer services agreement is terminated and the  
 6 client elects to maintain, through coverage maintained by the  
 7 client or through coverage maintained by a successor professional  
 8 employer organization, workers' compensation insurance coverage  
 9 for employees previously covered by the former professional  
 10 employer organization's policy ~~[policy in the company's own name or~~  
 11 ~~adds the company's former assigned workers to an existing policy]~~,  
 12 the premium for the workers' compensation insurance coverage for  
 13 the client ~~[policy of the company]~~ shall be based on the lower of:

14           (1) the experience modifier of the client ~~[company]~~  
 15 before being covered under the professional employer  
 16 organization's coverage ~~[entering into the staff leasing~~  
 17 ~~arrangement]~~; or

18           (2) the experience modifier of the license holder at  
 19 the time the client's coverage under the professional employer  
 20 organization's coverage is ~~[staff leasing arrangement]~~ terminated.

21           (f) On request, an insurer ~~[the Texas Department of~~  
 22 ~~Insurance]~~ shall provide the necessary computations to the  
 23 prospective workers' compensation insurer of the client ~~[company]~~  
 24 to comply with Subsection (e).

25           (g) On the written request of a client ~~[company]~~, a license  
 26 holder that elects to provide workers' compensation insurance for  
 27 covered ~~[assigned]~~ employees shall provide to the client ~~[company]~~

1 a list of:

2 (1) claims associated with that client [~~company~~] made  
3 against the license holder's workers' compensation policy; and

4 (2) payments made and reserves established on each  
5 claim.

6 (h) The license holder shall provide the information  
7 described by Subsection (g) in writing from the license holder's  
8 own records, if the license holder is a qualified self-insurer, or  
9 from information the license holder received from the license  
10 holder's workers' compensation insurance provider following the  
11 license holder's request under Section 2051.151, Insurance Code,  
12 not later than the 60th day after the date the license holder  
13 receives the client's [~~client-company's~~] written request. For  
14 purposes of this subsection, information is considered to be  
15 provided to the client [~~company~~] on the date the information is:

16 (1) received by the United States Postal Service; or

17 (2) personally delivered to the client [~~company~~].

18 SECTION 18. Sections 91.044, 91.046, 91.048, 91.050,  
19 91.061, 92.012, and 201.030, Labor Code, are amended to read as  
20 follows:

21 Sec. 91.044. UNEMPLOYMENT TAXES; PAYROLL. (a) A license  
22 holder is the employer of a covered [~~an assigned~~] employee for  
23 purposes of Subtitle A, Title 4, and, except for wages subject to  
24 Section 91.032(c), for purposes of Chapter 61. In addition to any  
25 other reports required to be filed by law, a license holder shall  
26 report quarterly to the Texas Workforce Commission on a form  
27 prescribed by the Texas Workforce Commission the name, address,

1 telephone number, federal income tax identification number, and  
2 classification code as described in the "Standard Industrial  
3 Classification Manual" published by the United States Office of  
4 Management and Budget of each client [~~company~~].

5 (b) For purposes of Subtitle A, Title 4, in the event of the  
6 termination of a contract between a license holder and a client  
7 [~~company~~] or the failure by a professional employer organization  
8 [~~staff leasing entity~~] to submit reports or make tax payments as  
9 required by that subtitle, the contracting client [~~company~~] shall  
10 be treated as a new employer without a previous experience record  
11 unless that client [~~company~~] is otherwise eligible for an  
12 experience rating.

13 Sec. 91.046. CONTRACTUAL DUTIES. Each license holder is  
14 responsible for the license holder's contractual duties and  
15 responsibilities to manage, maintain, collect, and make timely  
16 payments for:

- 17 (1) insurance premiums;  
18 (2) benefit and welfare plans;  
19 (3) other employee withholding; and  
20 (4) any other expressed responsibility within the  
21 scope of the professional employer services agreement [~~contract~~]  
22 for fulfilling the duties imposed under this section and Sections  
23 91.032, 91.047, and 91.048.

24 Sec. 91.048. REQUIRED INFORMATION. Each license holder  
25 shall:

- 26 (1) maintain adequate books and records regarding the  
27 license holder's duties and responsibilities;

1           (2) maintain and make available at all times to the  
2 executive director the following information, which shall be  
3 treated as proprietary and confidential and is exempt from  
4 disclosure to persons other than other governmental agencies having  
5 a reasonable, legitimate purpose for obtaining the information:

6           (A) the correct name, address, and telephone  
7 number of each client [~~company~~];

8           (B) each professional employer services  
9 agreement with a client [~~company contract~~]; and

10           (C) a listing by classification code as described  
11 in the "Standard Industrial Classification Manual" published by the  
12 United States Office of Management and Budget, of each client  
13 [~~company~~];

14           (3) notify the department of any addition or deletion  
15 of a controlling person as listed on the license application or  
16 renewal form by providing the name of the person not later than the  
17 45th day after the date on which the person is added or deleted as a  
18 controlling person; and

19           (4) provide a biographical history to the department  
20 in connection with the addition of a new controlling person.

21       Sec. 91.050. TAX CREDITS AND OTHER INCENTIVES. (a) For the  
22 purpose of determining tax credits, grants, and other economic  
23 incentives provided by this state or other governmental entities  
24 that are based on employment, covered [~~assigned~~] employees are  
25 considered employees of the client and the client is solely  
26 entitled to the benefit of any tax credit, economic incentive, or  
27 other benefit arising from the employment of covered [~~assigned~~]



employees of the client. This subsection applies even if the professional employer organization ~~[staff leasing services company]~~ is the reporting employer for federal income tax purposes.

(b) If a grant or the amount of any incentive described by Subsection (a) is based on the number of employees, each client shall be treated as employing only those ~~[assigned]~~ employees coemployed ~~[co-employed]~~ by the client. Covered ~~[Assigned]~~ employees working for other clients of the professional employer organization ~~[staff leasing services company]~~ may not be included in the computation.

(c) Each professional employer organization ~~[staff leasing services company]~~ shall provide, on the request of a client or an agency of this state, employment information reasonably required by the state agency responsible for the administration of any tax credit or economic incentive described by Subsection (a) and necessary to support a request, claim, application, or other action by a client seeking the tax credit or economic incentive.

Sec. 91.061. PROHIBITED ACTS. A person may not:

(1) engage in or offer professional employer ~~[staff leasing]~~ services without holding a license under this chapter as a professional employer organization ~~[staff leasing services company]~~;

(2) use the name, ~~[or]~~ title, or designation "professional employer organization," "PEO," "staff leasing company," "employee leasing company," "licensed professional employer organization," "professional employer organization services company," "professional employer organization company,"

1 ~~["licensed staff leasing company," "staff leasing services~~  
2 ~~company," "professional employer organization,"]~~ or  
3 "administrative employer" or otherwise represent that the entity is  
4 licensed under this chapter unless the entity holds a license  
5 issued under this chapter;

6 (3) represent as the person's own the license of  
7 another person or represent that a person is licensed if the person  
8 does not hold a license;

9 (4) give materially false or forged evidence to the  
10 department in connection with obtaining or renewing a license or in  
11 connection with disciplinary proceedings under this chapter; or

12 (5) use or attempt to use a license that has expired or  
13 been revoked.

14 Sec. 92.012. EXEMPTIONS FROM LICENSING REQUIREMENT. This  
15 chapter does not apply to:

16 (1) a temporary skilled labor agency;

17 (2) a professional employer organization ~~["staff~~  
18 ~~leasing services company"]~~;

19 (3) an employment counselor;

20 (4) a talent agency;

21 (5) a labor union hiring hall;

22 (6) a temporary common worker employer that does not  
23 operate a labor hall;

24 (7) a labor bureau or employment office operated by a  
25 person for the sole purpose of employing an individual for the  
26 person's own use; or

27 (8) an employment service or labor training program

1 provided by a governmental entity.

2       Sec. 201.030. PROFESSIONAL EMPLOYER ORGANIZATION [~~STAFF~~  
3 ~~LEASING SERVICES COMPANY~~]. For the purposes of this subtitle,  
4 "professional employer organization" [~~"staff leasing services~~  
5 ~~company"~~] has the meaning assigned by Section 91.001.

6       SECTION 19. Section 207.045(i), Labor Code, is amended to  
7 read as follows:

8       (i) A covered [~~An assigned~~] employee of a professional  
9 employer organization [~~staff leasing services company~~] is  
10 considered to have left the covered [~~assigned~~] employee's last work  
11 without good cause if the professional employer organization [~~staff~~  
12 ~~leasing services company~~] demonstrates that:

13           (1) at the time the employee's assignment to a client  
14 [~~company~~] concluded, the professional employer organization [~~staff~~  
15 ~~leasing services company~~], or the client [~~company~~] acting on the  
16 professional employer organization's [~~staff leasing services~~  
17 ~~company's~~] behalf, gave written notice and written instructions to  
18 the covered [~~assigned~~] employee to contact the professional  
19 employer organization [~~staff leasing services company~~] for a new  
20 assignment; and

21           (2) the covered [~~assigned~~] employee did not contact  
22 the professional employer organization [~~staff leasing services~~  
23 ~~company~~] regarding reassignment or continued employment; provided  
24 that the covered [~~assigned~~] employee may show that good cause  
25 existed for the covered [~~assigned~~] employee's failure to contact  
26 the professional employer organization [~~staff leasing services~~  
27 ~~company~~].

SECTION 20. The heading to Section 415.011, Labor Code, is amended to read as follows:

Sec. 415.011. NOTICE OF PROFESSIONAL EMPLOYER ORGANIZATION [~~STAFF LEASING SERVICES COMPANY~~] WORKERS' COMPENSATION CLAIM AND PAYMENT INFORMATION; ADMINISTRATIVE VIOLATION.

SECTION 21. Section 415.011, Labor Code, is amended by amending Subsections (a) and (c) and adding Subsection (a-1) to read as follows:

(a) In this section, "license holder" has the meaning assigned by Section 91.001.

(a-1) Except as provided by Subsection (c), a [~~staff leasing services company~~] license holder commits a violation if the license holder fails to provide the information required by Sections 91.042(g) and (h).

(c) A [~~staff leasing services company~~] license holder does not commit an administrative violation under this section if the license holder requested the information required by Sections 91.042(g) and (h) from the license holder's workers' compensation insurance provider and the provider does not provide the information to the license holder within the required time. A license holder shall notify the Texas Department of Insurance of a provider's failure to comply with the requirements of Section 2051.151, Insurance Code.

SECTION 22. Section 151.057, Tax Code, is amended to read as follows:

Sec. 151.057. SERVICES BY EMPLOYEES. The following services are not taxable under this chapter:

1           (1) a service performed by an employee for his  
2 employer in the regular course of business, within the scope of the  
3 employee's duties, and for which the employee is paid his regular  
4 wages or salary;

5           (2) a service performed by an employee of a temporary  
6 employment service as defined by Section 93.001, Labor Code, for an  
7 employer to supplement the employer's existing work force on a  
8 temporary basis, when the service is normally performed by the  
9 employer's own employees, the employer provides all supplies and  
10 equipment necessary, and the help is under the direct or general  
11 supervision of the employer to whom the help is furnished; or

12           (3) a service performed by covered ~~[assigned]~~  
13 employees of a professional employer organization ~~[staff-leasing~~  
14 ~~company]~~, either licensed under Chapter 91, Labor Code, or exempt  
15 from the licensing requirements of that chapter, for a client  
16 ~~[company]~~ under a written contract that provides for shared  
17 employment responsibilities between the professional employer  
18 organization ~~[staff-leasing company]~~ and the client ~~[company]~~ for  
19 the covered ~~[assigned]~~ employees, most of whom must have been  
20 previously employed by the client ~~[company]~~. The comptroller shall  
21 prescribe by rule the minimum percentage of covered ~~[assigned]~~  
22 employees that must have been previously employed by the client  
23 ~~[company]~~, the minimum time period the covered ~~[assigned]~~ employees  
24 must have been employed by the client ~~[company]~~ prior to the  
25 commencement of its contract, and such other criteria as the  
26 comptroller may deem necessary to properly implement this section.

27           SECTION 23. Section 171.0001, Tax Code, is amended by

amending Subdivisions (6) and (15) and adding Subdivision (8-a) to read as follows:

(6) "Client [~~company~~]" means:

(A) a client as that term is defined by Section 91.001 [~~person that contracts with a license holder under Chapter 91~~], Labor Code[, ~~and is assigned employees by the license holder under that contract~~]; or

(B) a client of a temporary employment service, as that term is defined by Section 93.001(2), Labor Code, to whom individuals are assigned for a purpose described by that subdivision.

(8-a) "Covered employee" has the meaning assigned by Section 91.001, Labor Code.

(15) "Professional employer organization" [~~"Staff leasing services company"~~] means:

(A) a business entity that offers professional employer [~~staff leasing~~] services, as that term is defined by Section 91.001, Labor Code; or

(B) a temporary employment service, as that term is defined by Section 93.001, Labor Code.

SECTION 24. Section 171.101(b), Tax Code, is amended to read as follows:

(b) Notwithstanding Subsection (a)(1)(B)(ii), a professional employer organization [~~staff leasing services company~~] may subtract only compensation as determined under Section 171.1013.

SECTION 25. Section 171.1011(k), Tax Code, is amended to

1 read as follows:

2 (k) A taxable entity that is a professional employer  
3 organization [~~staff leasing services company~~] shall exclude from  
4 its total revenue payments received from a client [~~company~~] for  
5 wages, payroll taxes on those wages, employee benefits, and  
6 workers' compensation benefits for the covered [~~assigned~~]  
7 employees of the client [~~company~~].

8 SECTION 26. Sections 171.1013(d) and (e), Tax Code, are  
9 amended to read as follows:

10 (d) A taxable entity that is a professional employer  
11 organization [~~staff leasing services company~~]:

12 (1) may not include as wages or cash compensation  
13 payments described by Section 171.1011(k); and

14 (2) shall determine compensation as provided by this  
15 section only for the taxable entity's own employees that are not  
16 covered [~~assigned~~] employees.

17 (e) Subject to the other provisions of this section, in  
18 determining compensation, a taxable entity that is a client  
19 [~~company~~] that contracts with a professional employer organization  
20 [~~staff leasing services company~~] for covered [~~assigned~~] employees:

21 (1) shall include payments made to the professional  
22 employer organization [~~staff leasing services company~~] for wages  
23 and benefits for the covered [~~assigned~~] employees as if the covered  
24 [~~assigned~~] employees were actual employees of the entity;

25 (2) may not include an administrative fee charged by  
26 the professional employer organization [~~staff leasing services~~  
27 ~~company~~] for the provision of the covered [~~assigned~~] employees; and

(3) may not include any other amount in relation to the covered ~~[assigned]~~ employees, including payroll taxes.

SECTION 27. Section 171.2125, Tax Code, is amended to read as follows:

Sec. 171.2125. CALCULATING COST OF GOODS OR COMPENSATION IN PROFESSIONAL EMPLOYER SERVICES ~~[STAFF LEASING]~~ ARRANGEMENTS. In calculating cost of goods sold or compensation, a taxable entity that is a client ~~[company]~~ of a professional employer organization ~~[staff-leasing-services company]~~ shall rely on information provided by the professional employer organization ~~[staff-leasing-services company]~~ on a form promulgated by the comptroller or an invoice.

SECTION 28. The following laws are repealed:

- (1) Section 91.001(2), Labor Code;
- (2) Section 91.043, Labor Code; and
- (3) Section 171.0001(2), Tax Code.

SECTION 29. (a) Not later than January 1, 2014, the Texas Commission of Licensing and Regulation shall adopt any rules necessary to administer Chapter 91, Labor Code, as amended by this Act.

(b) The changes in law made by this Act apply only to a professional employer services agreement entered into on or after the effective date of this Act. An agreement entered into before the effective date of this Act is governed by the law in effect on the date the agreement is entered into, and the former law is continued in effect for that purpose.

(c) Section 91.042(c-1), Labor Code, as added by this Act, is not intended to change the interpretation of Section 462.308,



1 Insurance Code, but is intended to clarify the application of that  
2 section.

3 (d) In adopting rules to implement Section 91.0411, Labor  
4 Code, as added by this Act, the commissioner of insurance shall  
5 consider rules adopted with respect to similar benefit plans.

6 SECTION 30. This Act takes effect September 1, 2013.